

ISO MATRIX¹

Issues	State-Chartered Nonprofit Corporation	State-Chartered Nonprofit Cooperative	Federal Wholly Owned Nonprofit Corporation
<u>Requirements for Formation:</u>	Formed under state non-profit corporation statute; formation requires only preparation and filing of articles or certificate.	Formed under state cooperative statute; formation requires only preparation and filing of articles or certificate.	New federal legislation ² required.
<u>Permitted purposes and powers</u>	Governing statutes generally provide that entity may be formed for any lawful purpose and may exercise all powers necessary and convenient to effect its purposes, to the extent not prohibited by law.	Governing statutes generally provide that entity may be formed to engage in any lawful business and may exercise all powers necessary and convenient to effect its purposes, to the extent not prohibited by law.	Powers defined by applicable legislation, and can be modified only by legislative amendment.
<u>Restrictions on Transfer of Control (TCA)</u>			
<ul style="list-style-type: none"> BPA 	<p>Congressional authorization would be helpful and might be required.³</p> <p>Potential constitutional issue.⁴</p> <p>Third party debt and Supply System obligations can be addressed.⁵</p>	<p>Congressional authorization would be helpful and may be required.³</p> <p>Potential constitutional issue.⁴</p> <p>Third party debt and Supply System obligations can be addressed.⁵</p>	<p>Congressional authorization would be helpful and may be required.³</p> <p>No constitutional issue.</p> <p>Third party debt and Supply System obligations can be addressed.⁵</p>
<ul style="list-style-type: none"> Cooperatives 	Approval required by board and members. ⁶	Approval required by board and members. ⁶	Approval required by board and members. ⁶
<ul style="list-style-type: none"> Municipals 	Legislative authorization (or court ruling) may be required to address potential delegation of authority issue. ⁷	Legislative authorization (or court ruling) may be required to address potential delegation of authority issue. ⁷	Legislative authorization (or court ruling) may be required to address potential delegation of authority issue. ⁷
	Tax-exempt transmission owner	Tax-exempt transmission owner	Tax-exempt transmission owner

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<ul style="list-style-type: none"> IOUs 	<p>transmission financing may have to be replaced with taxable transmission owner financing.⁸</p> <p>Various state regulatory approvals required</p>	<p>transmission financing would have to be replaced with taxable transmission owner financing.⁸</p> <p>Various state regulatory approvals required.</p>	<p>transmission financing would have to be replaced with taxable transmission owner financing.⁸</p> <p>Various state regulatory approvals required.</p>
<u>Meets FERC Governance Standard⁹</u>	Yes	Yes	Board members appointed by President; FERC has not ruled on the independence of this approach.
<u>FERC jurisdictional</u>	Yes	Yes, if no Rural Utilities Service financing	Yes, to extent provided in legislation.
<u>Rates: cost-based or performance-based?</u>	Cost-based	Cost-based	Cost-based
<u>Who bears risk of loss?</u>	Creditors and customers	Creditors and customers	Creditors and customers
<u>Capitalization</u>	Debt	Debt	Debt
<u>Who can vote for board members?</u>	<p>Members (determined by corporate charter).</p> <p>Only governmental entities could be members if formed under state Interlocal Cooperation Act.</p>	<p>Members (determined by corporate charter).</p> <p>Only governmental entities could be members if formed under state Interlocal Cooperation Act.</p>	President appoints board members.
<u>Condemnation Authority</u>	In most states under current law.	In most states under current law.	Yes, if authorized by federal legislative charter.

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<u>NEPA Review Required</u> <ul style="list-style-type: none"> Initial transfer of assets or control Ongoing 	<p>Yes for BPA</p> <p>Initial BPA Programmatic Analysis needed to cover future RTO interconnection decisions; continuing federal environmental review needed for federal transmission line expansions.</p>	<p>Yes for BPA</p> <p>Initial BPA Programmatic Analysis needed to cover future RTO interconnection decisions; continuing federal environmental review needed for federal transmission line expansions.</p>	<p>Yes unless otherwise provided in legislative charter.</p> <p>Yes, unless otherwise provided in legislative charter.</p>
<u>State and Local Taxation (TCA)</u> <ul style="list-style-type: none"> Property/leasehold excise taxes WA revenue taxes 	<p>Depends on interpretation of ambiguous state tax rules.¹⁰</p> <p>Without legislative change, RTO may incur a 3.873% public utility tax or 1.5% business and occupation tax on gross RTO or TCA revenues taxed by Washington State.¹¹</p>	<p>Depends on interpretation of ambiguous state tax rules.¹⁰</p> <p>Without legislative change, RTO may incur a 3.873% public utility tax or 1.5% business and occupation tax on gross RTO or TCA revenues taxed by Washington State.¹¹</p>	<p>Depends on interpretation of ambiguous state tax rules.¹⁰</p> <p>Depends on provisions of applicable enabling legislation.</p>

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<u>RTO Entity Liable for Income Taxes?</u>	No, if granted exemption from federal income taxes under Section 501(c)(3) or another section of the Internal Revenue Code.	Likely ¹²	No
<u>Rights-of-Way</u>			
• BPA	No issue	No issue	No issue
• Municipals	No issue	No issue	No issue
• IOUs	No issue	No issue	No issue
<u>Convertible to Transco?</u> ¹³	Yes ¹⁴	Yes ¹³	To extent provided by legislation.

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1. Applies as well to TCA arrangement with a Transco.

2. The federally wholly owned option would require new federal legislation creating the new entity (corporation or agency). Such legislation must address, among other matters:

- governance and control of the entity;
- access to financing either by (i) transferring BPA's existing transmission business line authorities to borrow from the Treasury and/or to borrow from private debt markets through conduit debt issuers or (ii) obtaining new authority to issue debt directly to private debt markets;
- shielding nonfederal transmission assets, or the former assets of nonfederal transmission owners, from being burdened by a spillover of BPA's power function costs, such as BPA fish costs and the costs of the BPA-backed Energy Northwest (Supply System) projects;
- fiscal control of the new entity (e.g., whether the new entity is appropriated under a new revolving fund or receives annual appropriations, whether it has authority to determine the character and necessity of its obligations, its priority of payments and its relation to the U.S. Treasury, if any, for support for the entity's obligations);
- whether and the extent to which federal statutes governing employment, information disclosure, environmental laws, procurement, etc. now applicable to Bonneville would be applicable to the new entity;
- the scope of the functions and authorities of the entity; and
- the nature of FERC regulation over the entity.

3. The members of the RTO legal committee did not reach consensus as to whether any legislation would be required for BPA to transfer, through a Transmission Control Agreement with an ISO or with a Transco, sufficient control of the federal transmission system to meet FERC's independence requirement. The members did agree that explicit Congressional authorization would be helpful in defending any challenges to BPA's participation while some believe that such legislation is essential to BPA's participation.

4. There may be constitutional issues associated with executive delegation and executive appointments authorities. These issues may be resolved by legislation which either eliminates BPA's statutory responsibilities regarding the transmission facilities or suspends them while the BPA facilities are operated by the RTO.

5. To preserve the rights of BPA's third party debt holders and of the net-billed participants, (a) BPA needs to retain the ability to set its revenue requirement to recover its costs; (b) net-billing participants must continue to be net-billed; and (c) possibly payments for RTO transmission services will need to be made to a payment agent for BPA

and other transmission providers, rather than to the RTO.

6. Under Section 501(c)(12) of the Internal Revenue Code, in order for a cooperative to maintain tax-exempt status in any year, not less than 85 percent of the gross income of the cooperative in such year must come from the members of the cooperative. Under current law, therefore, if a cooperative transferring ownership or operational control of its transmission facilities to an RTO wished to maintain the cooperative's tax-exempt status, the RTO would be required to be a member of the cooperative (or, alternatively, no more than 15 percent of the gross income of the cooperative would be permitted to be derived from revenues received from the RTO). Pending federal legislation would permit an electric cooperative providing open access transmission service (including under an RTO tariff) to maintain tax-exempt status under Section 501(c)(12) without regard to the amount of transmission revenue derived from non-members of the cooperative.

7. Statutory limitations may apply to the authority of a municipal or PUD transmission owner to delegate its powers to another entity.

8. Although under a TCA arrangement the ownership of transmission facilities of publicly owned utilities would remain unchanged, those facilities would be ineligible for continued tax-exempt financing if either: (1) proceeds from use of the facilities by private entities exceeded 10% of the total proceeds from such use, as provided in Section 141 of the Internal Revenue Code; or (2) the TCA violated the management contract provisions of Section 1301(e) of the Internal Revenue Code. Temporary regulations, which expire in January 2001, are currently in place to provide relief from these rules for municipal facilities involved in FERC-ordered wheeling transactions. Legislation is also under consideration which would permanently resolve these issues with respect to transmission facilities. .

9. Met either with independent board (board members do not represent individual classes or members) or representative board (board members are elected under a system in which no individual market participant or class of participants can control decisionmaking).

10. Legislative clarification is desirable to address issues related to property taxes and related in-lieu excise taxes such as leasehold excise taxes.

11. Proposed changes related to the Washington State public utility tax and related business and occupation taxes are before the Washington legislature in the current legislative session, which ends in March 2000.

12. Under Section 501(c)(12) of the Internal Revenue Code, in order for a cooperative to maintain tax-exempt status in any year, not less than 85 percent of the gross income of the cooperative in such year must come from the members of the cooperative. An RTO formed as a cooperative could not satisfy this requirement unless effectively all of the RTO's transmission customers were members of the RTO. As a practical matter, therefore, relief from the limitations of Section 501(c)(12) would be required in order for a cooperative corporation to maintain tax-exempt status while serving as the RTO entity. Pending federal legislation would permit an electric cooperative providing open access transmission service (including under an RTO tariff) to maintain tax-exempt status under Section 501(c)(12) without regard to the amount of transmission revenue derived from non-members of the cooperative.

13. Might consist of conversion to any of the forms of entity shown on Transco matrix.

14. Any such conversion may have tax and other impacts which should be taken into account when determining various structural details.